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PETITION FOR WRIT OF CERTIORARI

A. Petitioners respectfully submit this Petition for Writ of Certiorari to review the three cases between Fifi Belondon and the City of Casper, Criminal Nos. 5505, 5506 and 5507 in the District Court of the Seventh Judicial District of the State of Wyoming, which cases have not been reported in an official report.

B. The jurisdiction of this Court is invoked upon the following grounds:

The Judgment and Decree was entered in Criminal Action No. 5505 in the District Court of the State of Wyoming on May 10, 1968. The Judgments and Decrees were entered in Criminal Actions 5506 and 5507 on May 21, 1968 in the same Court. These Judgments and Decrees were affirmed by the Supreme Court of the State of Wyoming on June 27, 1969, in a consolidated action treating cases numbered 3725, 3726 and 3727. Petition for rehearing was denied on September 29, 1969 by the Supreme Court of the State of Wyoming. The Supreme Court of the State of Wyoming returned its opinion and mandate on affirmance on October 22, 1969, to the District Court of the Seventh Judicial District of the State of Wyoming. The Supreme Court of the United States has jurisdiction to review the Judgments or Decrees rendered by the highest court of a state by Writ of Certiorari where the validity of a state statute is drawn in question on the grounds of its being repugnant to the Constitution of the United States or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of the United States.

C. The questions presented for review in this Petition are as follows:

1. In all three of these cases the defendant was convicted upon a basis of illegally seized evidence. After arresting her in the kitchen of a rooming house, the police proceeded to make an exhaustive search of the whole building, including the basement, on the basis of the arrest alone. No search warrant was ever issued in these cases and there has been no evidence presented which shows circumstances which would obviate the general necessity of getting a search warrant.

2. In cases No. 5506 and 5507 in the District Court, the defendant was denied effective assistance of counsel since the police officer stayed in the room when she called her attorney and could overhear anything she would say to him.

3. In the case No. 5505 in the District Court, the prosecution refused to specify the crime for which the defendant was being charged. The defendant was thus not able to present an adequate defense since the charges against her were in the disjunctive making it impossible to determine the actual charge out of eighteen (18) possibilities. Thus the defendant was denied her right to be informed of the nature and cause of the accusation as guaranteed by the Sixth Amendment of the United States Constitution.

D. This case involves the following Constitutional provisions, treaties, statutes, ordinances and regulations: See Appendix.

United States Constitution, Amendment 6

Casper City Code, Section 20-30A or Ordinance No. 1440A

Casper City Code, Section 20-30D of Ordinance No. 1440A.

E. A concise statement of the case is as follows:

The defendant, Fifi Belondon, was convicted in Municipal Court of the City of Casper of three separate offenses involving the violation of City Ordinances of Casper. She appealed each conviction to the District Court of Natrona County where on trial the defendant was again found guilty in each case and sentenced to thirty (30) days in the City Jail for each offense. The first charge was for soliciting an act of prostitution on November 23, 1967. The second was for maintaining a house of prostitution on November 23, 1967. The third was for keeping, maintaining or operating a place or a building for the purpose of prostitution, lewdness or assignation on November 29, 1967. The attorney for the defendant raised objections at all stages of the proceedings by oral argument and, in addition, by written briefs in the Supreme Court of the State of Wyoming with respect to the Constitutional questions raised in this Petition. The defendant was orginally arrested in a large rooming house by means of a Jane Doe arrest warrant. At the time of the arrest, the officer changed the warrant in that he filled in the defendant's name. Pursuant to this arrest, police officers searched the whole rooming house including the basement, seizing evidence which was used at the trial as a basis for convicting the defendant. No warrant was ever issued nor is there shown any facts which would excuse the issuance of a warrant in this situation. The defendant was then given the opportunity to call her attorney, but a police officer remained in the same room near the telephone where he could overhear anything she said to him.

In case No. 5505, the defendant was charged in the indictment with keeping, maintaining or operating a place or building for the purpose of prostitution, lewdness or assignation. The prosecution was requested to specify the charge but refused to do so.

F. The Writ of Certiorari should be allowed for the following reasons as provided in Rule 19-1(b) of the Rules of the Supreme Court which provides that a Writ of Certiorari may issue "when it appears that the highest court of a state has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision". The United States Supreme Court has provided guidelines in recent cases which states should follow in order that rights guaranteed in the Bill of Rights in the United States Constitution as extended to the states by the Fourteenth Amendment will not be denied. The Writ should be granted since the State of Wyoming has failed to follow the guidelines set up by the United States Supreme Court in the course of trying this defendant.

1. As an indication of this, in Case No. 5505 in the District Court, the defendant was not able to present an adequate defense as the charges against her were in the disjunctive making it impossible to determine the actual charge out of 18 possibilities. This is contrary to the guarantee in the Sixth Amendment of the United States Constitution that the accused shall be informed of the nature and cause of the accusation.

2. Evidence seized without a search warrant should not have been admitted since this evidence was seized from rooms outside of the room in which the arrest took place. The complete rooming house was

searched including the basement and evidence was accumulated which was used in the trial to convict the defendant. Objections to the admission of this evidence were made at all stages in the proceeding. Under the language of **Chimel v. California,** U.S. (6/23/69); police after making a valid arrest of a suspect in his home or office may conduct a warrantless search for weapons and destructible evidence only into the area immediately within the suspect's reach. Any further search must be either consented to or authorized by warrant in order to be valid. Thus the search in question was invalid since it was not made under a search warrant and was clearly outside the scope of searches incident to a lawful arrest as defined by the **Chimel** case. In none of the proceedings has the state alleged that there was any consent given with respect to any of the searches made. Items allowed into evidence were seized from areas so remote from the place of arrest that they would not even meet pre-**Chimel** standards as displayed in the cases of **U.S. v. Rabinowitz,** 399 U.S. 56 and **Harris v. U.S.,** 331 U.S. 145.

3. The right to assistance of counsel guaranteed by the Sixth Amendment of the United States Constitution as extended to the states by the Fourteenth Amendment to the United States Constitution has been effectively denied the defendant in these cases. The defendant was allowed to call her attorney but the police officer stayed in the room making her right to call him ineffective. It is not merely assistance of counsel, but effective assistance which is guaranteed by the Constitution of the United States.

4. The defendant has exhausted her remedies in the courts available to her in the State of Wyoming and these courts have constantly decided important questions of federal law in a way in conflict

with applicable decisions of this Court and have so far departed from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's power of supervision. The Writ of Certiorari should issue in order that rights guaranteed under the Constitution of the United States will be assured to these defendants.

Respectfully submitted,

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Raymond B. Whitaker
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APPENDIX

Casper City Code

Sec. 20-30(a). No person shall keep, set up, maintain or operate any place, structure, building or coveyance for the purpose of prostitution, lewdness or assignation, or with knowledge or reasonable cause to know that the same is or is to be used for such purpose, or receive or offer to agree to receive any person in any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or permit any person to remain therein for such purpose.

Sec. 20-30(d). No person shall engage in or solicit prostitution, lewdness or assignation, or aid or abet prostitution, lewdness or assignation by solicitation or by any means whatsoever.

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

G. Opinion

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1969

JUNE 27, 1969

FIFI BELONDON,	)	
	)	
Appellant	)	
(Defendant below),	)	
	)	Nos. 3725, 3726, and 3727
v.	)	
	)	
CITY OF CASPER,	)	
	)	
Appellee	)	
(Plaintiff below).	)	

Appeals from the District Court of Natrona County, Wyoming, the Honorable R. M. Forrister, Judge.

Raymond B. Whitaker and Charles S. Aspinwall, Casper, for appellant.

Jack D. Emery, City Attorney, Casper, for appellee.

Before GRAY, C. J., and McINTYRE, PARKER, and McEWAN, J. J. Mr. Justice McINTYRE delivered the opinion of the court.

Fifi Belondon was convicted in municipal court of three separate offenses involving the violation of city ordinances of Casper. She appealed each conviction to the district court of Natrona County, where on trial de novo she was again found guilty in each case and sentenced to 30 days in the city jail for each offense. Each conviction has been appealed to our court.

The first charge was for soliciting an act of prostitution on November 23, 1967; the second was for maintaining a house of prostitution on November 23, 1967. These two cases were consolidated on appeal to the district court and in our court. In the district court, the district judge tried the appeals without a jury. In the supreme court the first two cases are designated as Cases Nos. 3726 and 3727.

The third charge alleged defendant did on November 29, 1967, "keep, maintain or operate a place or building for the purpose of prostitution, lewdness or assignation." The appeal in that case was tried to a district court jury. In our court the third case is designated as Case No. 3725.

Cases 3726 and 3727

We will deal first with the two earlier charges alleged to have been committed November 23, 1967—cases numbered 3726 and 3727. With respect to these cases, the points relied on for reversal are these:

1. There was insufficient evidence to convict defendant beyond a reasonable doubt of either offense.

2. The Court allowed evidence of the defendant's reputation when defendant did not testify.

3. The admission into evidence of a dresser, wash basin and other items with no search warrant or warrant for defendant's arrest.

4. The eavesdropping by the police officer, Dalgarno, on the defendant's conversation with her lawyer by telephone.

Point 1. Regarding appellant's claim of insufficient evidence for a conviction, her attorney argues only that the premises were owned and operated by Leo Weiss, who was present at the time of the alleged offenses; and there was no showing that defendant was in any way in control of the premises by lease, agreement or otherwise. No other challenge of the evidence is made and no case authority is cited.

Witnesses who went to the premises in question to obtain evidence for the police testified to being admitted by Miss Belondon; that she examined identifications; that she directed the appearance of other girls; that she had keys for and opened various locked doors and a dresser drawer; that she produced persons whom the police afterwards sought; that she had possession of the marked money which police witnesses had used; and that she posted bond for the other girls arrested at these premises. One witness testified unequivocally to a solicitation of an act of prostitution by Miss Belondon.

No testimony on behalf of the defendant was offered. In the absence of explanation or testimony to the contrary, the trier was entitled to believe defendant had solicited an act of prostitution; and that she was maintaining a house of prostitution at the time charged. The fact that Weiss owned the premises would not necessarily prove that Miss Belondon did not maintain a house of prostitution within the building thereon, whether alone or in conjunction with another.

The trier was, of course, the judge of the weight to be given to the evidence, and appellant has failed to show an absence of sufficient evidence for conviction.

Point 2. Appellant complains under this point that the trial court allowed evidence of the defendant's reputation when defendant did not testify. Counsel's only argument in support of the point is that there is no authority for testimony to be offered relative to a person's reputation without the person first testifying. No authority has been cited to support the argument.

The testimony objected to was testimony of a witness that defendant had a reputation of being a madam operating and maintaining a house of prostitution and that of a prostitute. The record shows such testimony was allowed by reason of § 6-92, W.S. 1957, and similar provisions in a city ordinance of Casper, both of which are to the effect that in the trial of any person for maintaining or operating a place of prostitution:

> " * * * testimony of a prior conviction, or testimony concerning the reputation of any place, structure, or building and of the person or persons who reside in or frequent the same and of the defendant shall be admissible in evidence in support of the charge."

Appellant has not challenged the constitutionality or validity or applicability of either the ordinance or § 6-92. In the absence of any showing to that effect, we will not assume the ordinance or statute to be unconstitutional or void. **Brinegar v. Clark,** Wyo. 371 P. 2d 62, 64. It follows, then, that there was legislative reason and authority for allowing the testimony concerning the reputation of defendant with respect to the matters covered.

Point 3. Appellant complains, in point 3, of the admission into evidence of a dresser, wash basin and

other items because no search warrant had been obtained.

It is undisputed in the evidence that defendant had already been arrested on the two charges we are now considering, and the search and seizure complained of was incident to such arrest.

The principle that officers have the right to make such a search as was made in this case was recognized in the earlier case of **Wiggin v. State,** 28 Wyo. 480, 206 P. 373, 376. There Justice Blume stated:

> "The law is well settled that an officer has the right to search the party arrested and take from his person and from his possession property reasonably believed to be connected with the crime * * *."

With respect to what is meant by "possession" in this connection, Justice Blume went on to say, 206 P. at 377, where property of evidentiary value is at a place to which lawful access has been obtained, the officer may upon the lawful arrest of defendant seize and take the property into his possession.

It is clear from the record in the instant case that the police were voluntarily admitted by defendant, and there is no claim they did not have lawful access to the rooms where the property was found.

The rule we have referred to from the **Wiggin** case is still good law in this jurisdiction. It has been followed quite recently in **Dailey v. U. S.,** 10 Cir., 365 F.2d 640, 641; and in **Whiteley v. State,** Wyo., 418 P. 2d 164, 168.

Appellant's point 3 is without merit.

Point 4. In this point appellant complains of alleged eavesdropping by Captain Dalgarno of the police, on defendant's conversation with her lawyer by telephone.

The record simply does not bear out appellant's claim that such eavesdropping took place; and there is no suggestion or showing that the defendant was in any manner prejudiced or harmed in her defense. No law has been cited on this point and we do not feel there is any to discuss.

Case 3725

In connection with the appeal in Case 3725, appellant has listed several points which are supposedly relied on for reversal. However, argument on her behalf leaves us believing there is very little for us to discuss. We did not understand that anything new or different was added in oral argument to what was stated in appellant's brief, and the entire argument made for appellant in her brief is this:

> "This so-called proposal made by some person who remains anonymous and which so-called proposal occurred four rooms away from the presence of the defendant is a travesty of justice in that there is absolutely no connection of the defendant to the alleged offense.
>
> "The City of Casper through its duly appointed officers swore on the one hand that one Leo Weiss was keeping, operating and maintaining the premises and then swore that the defendant was. Someplace along the line they should be required to elect and

this was called to the attention of the trial Court in defendant's motion to dismiss, which motion was denied.

"To say that a deaf juror, who was qualified by the State of Wyoming, accords the defendant a trial by twelve impartial jurors is on the fact [face] of it, fallacious. As the Court is aware, jurors are qualified when they are empanelled and questions as to their ability to hear or see are determined before the defendant has a chance to question them. On the face of it, there is no rational way that you can ask a person whether he hears you or not and therefore this defendant has not been accorded a jury trial.

"Section 6-9 [6-90] Wyoming Statutes of 1967 [1957] defines assignation, but it should define the intelligence of this Court to advise the defendant whether or not she has been convicted of keeping, maintaining or operating a house of prostitution, or for lewdness or assignation. Certainly they are not the same thing.

"It is very difficult to answer a conviction of this kind because of the multiplicity of choices the jury had and the result is clouded by so many possibilities as to be beyond the capacity of this Court or any person to state exactly what crime or crimes have been committed."

Concerning Leo Weiss' connection with the premises in question, we have discussed that sufficiently

under point 1 for Cases 3726 and 3727. As we stated there, Weiss' connection with the premises would not necessarily prove that Miss Belondon did not maintain a house of prostitution within the building on such premises, whether alone or in conjunction with another. The jury which rendered the verdict involved in this appeal (Case 3725) found from the evidence that she was guilty as charged.

Regarding the juror whom counsel for appellant refers to as a "deaf juror," the record shows that following the city's testimony the judge was told by the clerk and bailiff that juror McDaniel was partly deaf. Thereupon, the judge took McDaniel and all counsel into his chambers and asked the juror how much he had heard and how much he had not heard. The juror said he had heard substantially all the testimony of the witnesses, the statements of counsel, and particularly, the words of the clerk of court, but that the judge mumbled and was difficult to hear.

There was no defense evidence, and the judge started to instruct the jury. During the reading of the first instruction the judge stopped and inquired whether McDaniel could hear him and he said he could. The judge also inquired whether McDaniel had heard what he had said so far. McDaniel answered in the affirmative. After all of the first instruction had been read, the judge asked juror McDaniel if it would be better for him to sit in some other seat. McDaniel answered, no.

This state of the record and the vagueness of appellant's argument leave us convinced appellant has not shown she was prejudiced by McDaniel's presence on the jury. For reversal there must be prejudicial error, and the party appealing has the burden of show-

ing such error. **Robertson v. State Highway Commission,** Wyo., 450 P. 2d 1003, 1005.

Moreover, a trial judge has a wide discretion in ruling upon the qualification of jurors and his determination is not subject to review except upon a clear showing of abuse of such discretion. **Lindsey v. State,** 189 Tenn. 355, 225 S.W. 2d 533, 537, 15 A.L.R. 2d 527; **State v. Allison,** 122 Mont. 120, 199 P. 2d 279, 285-286; **State v. McFall,** 67 N.M. 260, 354 P. 2d 547, 549. See also **Lee v. Swyden,** Okl., 319 P. 2d 1009, 1010, 1014.

The only additional matter argued for appellant in this case seems to relate to use of the word "or" in the charge against her. It is claimed the jury had a "multiplicity" of choices.

Our attention has not been called to any timely objections made to the form of the complaint. The kind of objections now made for defendant should have been made prior to her plea of not guilty, and certainly before a jury was impaneled. Defects in the complaint such as appellant now asserts, if they were in fact defects, are waived if not excepted to by proper motion or pleading prior to defendant's plea of not guilty. Section 7-188, W.S. 1957; **Waxler v. State,** 67 Wyo. 396, 224 P. 2d 514, 517-518; **State v. Hickenbottom,** 63 Wyo. 41, 178 P. 2d 119, 124-125.

Additionally, we recently reaffirmed in **Shoemaker v. State,** Wyo., 444 P. 2d 309, 310 (where the charge was in the disjunctive), that a charge in the words of the statute is sufficient. Belondon was charged in the words of an ordinance.

We fail to find reversible error in connection with any of the matters called to our attention in Case No. 3725.

Case No. 3725, Case No. 3726 and Case No. 3727 are all affirmed.

H. Judgment or Decree

IN THE DISTRICT COURT

SEVENTH JUDICIAL DISTRICT

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

THE CITY OF CASPER)
)
Plaintiff,)
) Criminal No. 5505
vs.)
)
FIFI BELONDON)
)
Defendant.)

JUDGMENT AND SENTENCE

THIS MATTER coming on for hearing on this 25th day of April, 1968, upon prior setting had and made by the Court herein for trial to a jury, the plaintiff being represented by Jack D. Emery, City Attorney for the City of Casper, the defendant being personally in Court and with her attorney of record Raymond B. Whitaker, a jury having been empaneled and sworn, after being properly instructed, retired, and after due deliberation returned a verdict as follows:

"GUILTY"

The Court having polled the jury and found it to be the verdict of each juryman, entered the following sentence:

IT IS HEREBY THE SENTENCE OF THIS COURT: Based upon the jury's verdict entered here-

in, that the defendant be and she is hereby remanded to the custody of the Chief of Police of the City of Casper, Natrona County, Wyoming, by him to be confined to the City Jail for a period of thirty (30) days, to all of which the defendant excepts and the exceptions are allowed.

IT IS HEREBY FURTHER ORDERED that the bond of the defendant heretofore posted be and it is hereby continued during the pendency of her appeal to the Supreme Court of the State of Wyoming.

Done in open Court this 21 day of May, 1968.

BY THE COURT:

R. M. Forrister
District Judge

Approved as to Form:

Jack D. Emery
Attorney for Plaintiff

Raymond B. Whitaker
Attorneys for Defendant

IN THE DISTRICT COURT

SEVENTH JUDICIAL DISTRICT

STATE OF WYOMING	)	
	)	ss.
COUNTY OF NATRONA	)	
THE CITY OF CASPER	)	
	)	
Plaintiff,	)	
	)	Criminal No. 5506
vs.	)	
	)	
FIFI BELONDON	)	
	)	
Defendant.	)	

JUDGMENT AND SENTENCE

THIS MATTER coming on for hearing on the 6th day of May, 1968, upon prior setting had and made by the Court herein for trial to the Court, the plaintiff being represented by Jack D. Emery, City Attorney for the City of Casper, the defendant being personally in Court and with her attorneys of record, Raymond B. Whitaker and Charles S. Aspinwill, testimony of witness was adduced, argument of counsel was heard, the Court being informed in premises found the defendant,

"GUILTY"

The Court then imposed the following sentence:

IT IS HEREBY THE SENTENCE OF THIS COURT: That the defendant be and she is hereby remanded to the custody of the Chief of Police of the

City of Casper, Natrona County, Wyoming, by him to be confined to the City Jail for a period of Twenty (20) days, to all of which the defendant excepts and the exceptions are allowed.

IT IS HEREBY FURTHER ORDERED that the bond of the defendant heretofore posted be and it is hereby continued during the pendency of her appeal to the Supreme Court of the State of Wyoming.

Done in open Court this 20 day of May, 1968.

BY THE COURT:

R. M. Forrister
District Court

Approved as to Form:

Jack D. Emery
Attorney for Plaintiff

Raymond B. Whitaker
Attorney for Defendant

C. S. Aspinwall
Attorney for Defendant

IN THE DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

THE CITY OF CASPER)
)
Plaintiff,)
) Criminal No. 5507
vs.)
)
FIFI BELONDON)
)
Defendant.)

JUDGMENT AND SENTENCE

THIS MATTER coming on for hearing on the 6th day of May, 1968, upon prior setting had and made by the Court herein for trial to the Court, the plaintiff being represented by Jack D. Emery, City Attorney for the City of Casper, the defendant being personally in Court and with her attorneys of record, Raymond B. Whitaker and Charles S. Aspinwall, testimony of witness was adduced, argument of counsel was heard, the Court being informed in premises found the defendant,

"GUILTY"

The Court then imposed the following sentence:

IT IS HEREBY THE SENTENCE OF THIS COURT: That the defendant be and she is hereby remanded to the custody of the Chief of Police of the

City of Casper, Natrona County, Wyoming, by him to be confined to the City Jail for a period of Thirty (30) days, to all of which the defendant excepts and the exceptions are allowed.

IT IS HEREBY FURTHER ORDERED that the bond of the defendant heretofore posted be and it is hereby continued during the pendency of her appeal to the Supreme Court of the State of Wyoming.

Done in open Court this 20 day of May, 1968.

BY THE COURT:

R. M. Forrister
District Judge

Approved as to Form:

Jack D. Emery
Attorney for Plaintiff

Raymond B. Whitaker
Attorney for Defendant

C. S. Aspinwall
Attorney for Defendant